

6/5/2014 4:04:40 PM

ORDER NO. 2088

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman; and  
Robert G. Taub

Complaint on Changes in Retail Hours

Docket No. C2014-1

ORDER DENYING REQUEST FOR INJUNCTIVE RELIEF

(Issued June 5, 2014)

I. INTRODUCTION

Complainant, Douglas F. Carlson, requests injunctive relief prohibiting the Postal Service from changing retail hours in the San Francisco District.<sup>1</sup> The request fails to satisfy the standards for issuance of a preliminary injunction and, therefore, is denied.

II. PROCEDURAL HISTORY

Complainant filed this complaint case on April 30, 2014.<sup>2</sup> The Complaint alleges the Postal Service violated 39 U.S.C. § 3661. Complaint Erratum ¶¶ 2-7. The

---

<sup>1</sup> See Douglas F. Carlson Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief, April 30, 2014 (Complaint).

<sup>2</sup> On May 8, 2014, Complainant filed a notice and an erratum for his original Complaint. Douglas F. Carlson Notice of Filing of Corrected Exhibit 1 to Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief, May 8, 2014; Douglas F. Carlson Complaint on Changes in Retail Hours and Emergency Request for Injunctive Relief [Erratum], May 8, 2014 (Complaint Erratum).

Complaint Erratum also contains a request (the “Request”) that the Commission grant injunctive relief prohibiting the Postal Service “from implementing any changes in retail hours in the San Francisco District” until the Commission has ruled on the issues raised therein. *Id.* at ¶ 31. Complainant argues that the Request should be granted because: (1) the Postal Service’s plan to change retail hours, collection times, and hours of access to the box lobby will inflict irreparable harm on customers in the San Francisco District; and (2) the Complainant is reasonably likely to prevail on the merits. *Id.*

On May 7, 2014, the Postal Service filed its opposition to the Request.<sup>3</sup> The Postal Service argues that Complainant’s Request should be denied because: (1) Complainant has not provided any explanation for his assertion that he is likely to succeed on the merits of his claim; (2) Complainant’s allegations of injury are insufficient to justify injunctive relief; (3) the balance of equities do not tip in Complainant’s favor; and (4) a preliminary injunction would not be in the public’s interest. Postal Service Answer Errata at 8-20. The Postal Service also argues that the Commission lacks the authority to grant preliminary injunctive relief.<sup>4</sup> *Id.* at 2-8.

The Postal Service also filed a motion to dismiss the complaint on May 20, 2014.<sup>5</sup> Complainant filed his opposition to the motion to dismiss on May 27, 2014.<sup>6</sup> The motion to dismiss will not be resolved in this Order.

---

<sup>3</sup> United States Postal Service Answer in Opposition to Motion for an Emergency Order, May 7, 2014. On May 13, 2014, the Postal Service filed a notice and errata in response to Complainant’s erratum. Notice of United States Postal Service of Filing Errata to Answer in Opposition to Motion for an Emergency Order, May 13, 2014 (Postal Service Answer Errata).

<sup>4</sup> Because the Request has been decided in favor of the Postal Service, it is unnecessary to determine at this juncture whether the Commission has the authority to grant the injunctive relief sought by Complainant. See *Norton v. Matthews*, 427 U.S. 524, 532 (1976).

<sup>5</sup> United States Postal Service Motion to Dismiss the Complaint on Changes in Retail Hours, May 20, 2014.

<sup>6</sup> Douglas F. Carlson Answer in Opposition to Postal Service Motion to Dismiss, May 27, 2014.

### III. COMMISSION ANALYSIS

#### A. Applicable Legal Principles

Complainant requests that the Commission “grant emergency injunctive relief preventing the Postal Service from implementing any changes in retail hours in the San Francisco District.” Complaint Erratum ¶ 31. As an initial matter, this Request could be viewed as either a request for a preliminary injunction or a request for a temporary restraining order. However, as the tests for determining whether a request for a preliminary injunction or a temporary restraining order should be granted are identical, the Commission, for simplicity, will treat the Request as a request for a preliminary injunction.<sup>7</sup> See, e.g., *Howard Univ. v. Nat’l Collegiate Athletic Ass’n*, 675 F.Supp. 652, 654 (D.D.C. 1987).

A party seeking a preliminary injunction must establish the following:

(1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in the movant’s favor; and (4) that an injunction is in the public interest.<sup>8</sup> *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); Docket No. C2012-2, Order No. 1387, Order Denying American Postal Workers Union, AFL-CIO, Motion for Emergency Order, June 29, 2012, at 3. A preliminary injunction is an extraordinary remedy, which is not granted unless the movant, by a clear showing, carries the burden of persuasion. *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (quoting 11A C. Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2948, pp. 129-30 (2d ed. 1995)); *Davis v. Pension Benefit Guaranty Corp.*, 571 F.3d 1288, 1292 (D.C. Cir. 2009).

---

<sup>7</sup> This is the same test used in the review of a motion to stay. See *Va. Petroleum Jobbers Ass’n v. Fed. Power Comm’n*, 259 F.2d 921, 925 (D.C. Cir. 1958); Docket No. R2013-11, Order No. 2075, Order Denying Stay and Establishing Schedule for Reporting Requirements, May 2, 2014, at 7.

<sup>8</sup> The third-prong of this test has alternatively been stated as an inquiry into whether “the issuance of a stay [would] substantially harm other parties interested in the proceedings[.]” *Va. Petroleum Jobbers*, 259 F.2d at 925. *Accord Mills v. District of Columbia*, 571 F.3d 1304, 1308 (D.C. Cir. 2009); Order No. 2075 at 7. Regardless of the phrasing used, the essential element of this prong is that the possible harms stemming from the grant or denial of the preliminary injunction are weighed against each other. See *Winter*, 555 U.S. at 26.

Historically, these four factors have been evaluated on a “sliding scale,” such that a stronger showing on one factor could make up for a weaker showing on another. See *Davenport v. Int’l Bhd. of Teamsters*, 166 F.3d 356, 360-61 (D.C. Cir. 1991). The Court of Appeals for the D.C. Circuit has repeatedly declined to take sides in a circuit split on the question of whether likelihood of success on the merits is a freestanding threshold requirement to issuance of a preliminary injunction. *Am. Meat Inst. v. U.S. Dep’t of Agric.*, 746 F.3d 1065, 1074 (D.C. Cir. 2014). Absent clear guidance from the D.C. Circuit on this issue, the Commission will employ the “sliding scale” framework.

#### B. Likelihood of Success on the Merits

The first factor a party seeking a preliminary injunction must establish is a likelihood of success on the merits of the claim. Complainant provides a single, conclusory sentence regarding his likelihood of success on the merits – “In addition, Complainant is reasonably likely to prevail on the merits of this complaint.” Complaint Erratum ¶ 31. The Postal Service argues that the Commission must deny Complainant’s Request because Complainant has not provided any support or explanation for his assertion that he is likely to succeed on the merits of his claim. Postal Service Answer Errata at 9-10. The Postal Service also provides an analysis of why it believes Complainant will not succeed on the merits. *Id.* at 10-14.

Because Complainant provides no support for his assertion of likelihood of success on the merits, the Commission finds that this factor does not weigh in Complainant’s favor.

#### C. Likelihood of Irreparable Harm

The second factor a party seeking a preliminary injunction must establish is his likelihood of irreparable harm if the injunction is not granted. Complainant states that:

The Postal Service’s plan to change retail hours, collection times, and hours of access to the box lobby will inflict irreparable harm on customers in the San Francisco District

by depriving them of the postal services that they need. The plan will also require them to make costly and disruptive changes to their business and mailing practices.

Complaint Erratum ¶ 31. The Postal Service asserts that Complainant's allegations are limited to injuries in terms of money, time, and energy, which is insufficient to justify injunctive relief. Postal Service Answer Errata at 16.

In general, injuries "in terms of money, time and energy necessarily expended in the absence of a stay" are not enough to warrant preliminary injunctive relief. *Va. Petroleum Jobbers*, 259 F.2d. at 925. Consequently, the Commission finds that Complainant has not shown a likelihood of irreparable harm, and that this factor does not weigh in Complainant's favor.

#### D. Balance of the Equities

The third factor a party seeking a preliminary injunction must establish is that the balance of the equities tips in his favor. Complainant does not address this factor. For its part, the Postal Service argues that the balance of the equities tips in its favor. Among other things, the Postal Service argues that delaying implementation of the changes would exacerbate its well-publicized financial losses, inhibit the ability of local postal management to find greater operational efficiencies, and create confusion among customers. Postal Service Answer Errata at 16-18.

Complainant has not discussed the balance of equities factor in his Request. The Commission finds that this factor does not weigh in Complainant's favor.

#### E. Public Interest

The fourth factor a party seeking a preliminary injunction must establish is that the public interest is served by the granting of the injunction. Complainant does not address this factor directly, contending generally that the Postal Service's actions will deprive customers of needed postal services. Complaint Erratum ¶ 31. The Postal Service argues, *inter alia*, that a preliminary injunction would not advance the public

interest because it would impede its ability to make operational determinations. Postal Service Answer Errata at 18-20.

Customer access is an important concern. However, Complainant does not discuss the public interest factor in his Request and provides no support for his contention that customers in the San Francisco District will be deprived of postal services as a result of the Postal Service's actions. On the other hand, the Postal Service generally indicates that the granting of injunctive relief would impede its ability to make operational determinations and would weigh against the public interest. *Id.* at 20. For these reasons, the Commission finds that Complainant has not shown that an injunction is in the public interest, and that this factor does not weigh in Complainant's favor.

#### F. Conclusion

Complainant's Request is denied. Complainant fails to demonstrate that he is entitled to preliminary injunctive relief. The Commission finds that none of the four factors weighs in Complainant's favor.

*It is ordered:*

The Complainant's Request is denied.

By the Commission.

Shoshana M. Grove  
Secretary